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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,404

01/27/2004

Karl David McAllister

US20010207

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7590

03/31/2008

WHIRLPOOL PATENTS COMPANY - MD 0750  
500 RENAISSANCE DRIVE - SUITE 102  
ST. JOSEPH, MI 49085

EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

03/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,404	<b>Applicant(s)</b> MCALLISTER ET AL.	
	<b>Examiner</b> Joseph L. Perrin, Ph.D.	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 41 is/are pending in the application.
- 4a) Of the above claim(s) 1-11, 13, 16, 18, 19 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14, 15, 17, 20, 21 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20070802</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Examiner's Comment to Applicant's Preliminary Matter***

1. Initially, applicant is thanked for pointing out that HABERL (U.S. Patent No. 5,862,533) was not listed on the PTO-892 form. It appears that, through typographical error, the HABERL reference was not listed but U.S. Patent No. 5,832,533 was listed instead, while the body of the Office action correctly listed the patent number for HABERL as 5,862,533. To properly clarify the record, HABERL is cited in a PTO-892 form concurrently herewith. Any confusion resulting from this typographical error is regretted.

### ***Priority***

2. Applicant's petition for delayed claim for domestic priority to Application No. 10/142,345 has been granted per petition decision mailed 14 March 2008. Accordingly, given applicant's claim and that this application repeats a substantial portion of prior Application No. 10/142,345 and adds claims and additional disclosure not presented in the prior application, the instant application is considered a continuation-in-part of 10/142,345, filed May 9, 2002. However, it is noted that the newly added subject matter of the instantly amended claims which was incorporated by reference from U.S. Patent No. 5,219,370 in the instant application (see [0029]) is accorded the effective filing date of the instant application, January 27, 2004, because the incorporated reference, U.S. Patent No. 5,219,370 was not presented in the prior application.

### ***Response to Arguments***

3. Applicant's arguments in view of the amendment filed 12 November 2007, with respect to the rejections under §§ 102 & 103, as well as the double patenting rejection, have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new ground(s) of rejections are made as discussed below which are necessitated by amendment.

### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 12, 14 & 41 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,344,198 to ARENDT et al. ("ARENDT"). Re claims 12 & 14, ARENDT discloses a washing method for a horizontal axis oscillating washing machine including washing, after loading the items and supplying wash liquid, by oscillating (inherently clockwise and counterclockwise in a horizontal axis washing machine) and varying the speed and amplitude of oscillating (see entire document, for instance, col. 7, lines 56-60). ARENDT also discloses the oscillations effecting less than 1 G angular velocity (col. 8, lines 5-9). Re claim 41, ARENT further discloses the use of a controller (34) which controls the changing of tub speed through motor (18). The Examiner notes that it would be common sense to one having ordinary skill in the art that horizontal axis washing machines effect less than 1 G centrifugal force during a washing operation,

otherwise, the load would stick to the inner wall of the tub and no washing effect would occur.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 15 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over ARENDT in view of AAPA. Recitation of ARENDT is repeated here from above. While ARENDT discloses an oscillating washing method, ARENDT does not expressly disclose pauses between oscillations. In Figure 1 and relative associated text of applicant's original disclosure, applicant discloses that it is known to operate a horizontal axis washing machine with clockwise and counterclockwise oscillations including pauses thereinbetween which would effect a tumbling action and thus, a washing effect. Therefore, it would have been obvious to one of ordinary skill in the art to apply the technique of using pauses between oscillations as taught in AAPA in the washing method of ARENDT to yield the predictable results of increase a tumbling action (i.e. washing effect) in an oscillating washing machine. Moreover, there would be a reasonable expectation of success in combining ARENDT and AAPA, since each of the references are analogous to oscillating washing methods.

8. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over ARENDT in view of COORESMANS. Recitation of ARENDT is repeated here from a

previous rejection. However, while ARENDT discloses variable speeds ARENDT does not expressly disclose washing the items being oscillated in random variable speeds. COORESMANS teaches that it is known to optimize liquid movement and subsequent washing force in an oscillating washing apparatus by using either regular, periodic oscillation or random, non-periodic irregular oscillation (see paragraph [0064]). Therefore, the position is taken that a person of ordinary skill in the art at the time the invention was made would have been motivated to modify the known oscillation cycle disclosed by applicant with either a periodic oscillation or a random, non-periodic irregular oscillation in order to optimize a washing action. It is further noted that it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/  
Joseph L. Perrin, Ph.D.  
Primary Examiner  
Art Unit 1792

JLP